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The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta September 5th, 1945

VOLUME 34

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I N D E X

Volume 34

September 5th, 1945

WITNESSES

EXHIBITS

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Volume 34
9.30 A.M. Session
Sept. 5, 1945.

MR. STEER: Mr. Chairman, I spoke yesterday of putting in this morning the agreements between the Royalite and the Canadian Western Company but I find that those are already in as Exhibit 69 and with regard to the questions about which I asked Mr. Mercer to inform himself and the questions I put to him with regard to the accounts of the Royalite Company, it was ascertained yesterday afternoon that Mr. Hamilton, the Board accountant, had by arrangement with the Royalite Company made an analysis of the costs of the operations of that company for the years 1943. To make similar investigations apparently for any year prior to 1943 would be a matter of considerable time and perhaps unnecessarily so and my learned friend Mr. Fenerty and I have agreed that what we will ask is that that analysis which Mr. Hamilton has made be made available to us through the proper channels. In my submission the evidence that can be got from such an analysis is relevant to this Inquiry and the Board has power, as I read the Act under Section 19 . . . .

MR. CHAMBERS: Pardon my interjection, is it the intention to deal with this application now? I thought we were going to ask Mr. Mercer further questions.

THE CHAIRMAN: We intended to finish the cross-examination of Mr. Mercer and later hear the application .

MR. FENERTY: Before the Board proceeds, there may be some questions arising out of these statements to be put in, that we may wish to cross-examine Mr. Mercer on.

THE CHAIRMAN: He can be recalled.

MR. FENERTY: That is quite satisfactory, there might be something that arises out of the accounts.

MR. STEER: My attention has been called to the fact that numbers were given to these contracts yesterday.

THE CHAIRMAN: Yes, I have already struck them out.

MR. HARVIE: They are now Exhibit 69.

MR. CHAMBERS: Exhibit 69 was the agreement between Royalite and Madison, to which agreement the Gas Company was a party and attached to that were the old agreements between Royalite and the Gas Company.

THE CHAIRMAN: The agreements of 1921 and 1925?

MR. CHAMBERS: Yes. That is the agreement of December 31st, 1921 and the agreement of the 27th of June, 1924 and the agreement of the 10th of July, 1925.

MR. HARVIE: May I have those again?

MR. CHAMBERS: The agreement of the 21st of December, 1921 between Royalite and the Canadian Western; the agreement dated the 27th of June, 1924 between United Natural Gas Development Company and Canadian Western and then the agreement of the 10th of July, 1925 between Royalite and Canadian Western and then the assignment itself of the 20th of March, 1944 between the Royalite, Madison and the Canadian Western.

THE CHAIRMAN: The numbers for the Exhibits which are now being struck out are numbers 100 and 101.

Have you any further cross-examination, Mr. Steer, at the moment?

MR. STEER: No, I have not.

THE CHAIRMAN: Mr. Blanchard?

MR. McDONALD: There are one or two questions. I had not yet finished and I would like to continue now.

THE CHAIRMAN: Yes, Mr. McDonald.

R. D. MERCER, having been recalled,
CROSS-EXAMINATION BY MR. McDONALD, CONTINUED.

Q Mr. Mercer, in your cross-examination yesterday Mr. Fenerty suggested to you that the producers of gas should pay part of the gathering cost, - that is what I understood to be the import of his questions,- now I suggest to you that in the percentages of these products or fixing the percentage of the products, the natural gasoline recovered, in determining that percentage consideration was given to the cost of operating the gasoline plant as a whole including the cost of gathering and compressing the gas before it got to the plant.

A That would be so. The Oil Plant operator would take into consideration his cost, both in operating the plant and gathering and so on in offering a percentage of the gasoline content to the producer.

Q And to the extent that that percentage is decreased because of the cost of gathering which the operator is now charging up, then the producer is paying his proportion of the cost of gathering and compressing the gas.

A Yes, that would follow.

Q Now I suggest to you further that the producers receive something for dry gas sales at the present price of 2 cents, that that 2-cents' price at the present time and any price fixing in the future would in part be based upon a consideration of the cost of gathering, of transporting and delivering gas to the ultimate consumer.

A It certainly would take into consideration the producers' costs.

A It certainly would take into consideration the producer's costs.

Q The costs of handling a commodity to the ultimate consumer would have a bearing ?

A Yes it would have a bearing on it. That is correct.

Q So that to the extent that the sales price to the producer is varied because of the cost of handling the gas between the producer and the ultimate consumer, he is bearing a proportionate cost of the handling ?

A Yes sir.

Q Would you refer to Exhibit 99, R-3, Mr. Mercer, Page 2, at the bottom of the page, the last paragraph, "It is further submitted that the price set for repressured and conserved gas once set should remain constant in order that Royalite may receive neither more nor less than the moneys invested in such repressured and conserved gas, plus interest on the moneys so invested". Now can you elaborate on that statement. Can you tell me why that Company suggests that the repressured gas price remain constant?

A Well as this was a matter of repressuring gas for a period of at least thirteen years and a matter of the purchase of such gas, Royalite in its submission is agreeable to the buying of the gas. In other words acting as a medium for the purchase of the gas from the producer and holding that until the ultimate consumption and their submission is that they want neither more nor less than what the actual cost is for this service.

Q Do I understand you right or your submission that Royalite will only recover from the consumer whoever purchases this gas that is finally produced and sold on the market, the money actually invested in purchasing the gas from the producer ?

A That is so.

Q Plus interest compounded at the rate of 8% ?

A That is so.

Q I understand that Royalite will not speculate with this gas in any way ?

A No.

Q It will not receive a higher price even though the market price from producing wells should be at a higher rate than the fixed price ?

A That is the intention.

Q As an example, if this gas is repressured at two cents, that is a two cent fixed price now and which your Company is buying at .63 cents and when that gas is marketed fifteen years from now Royalite will receive two cents for that gas ?

A That is so.

Q Even though this Board or the Board in effect at that time may fix that cost at ten cents. The value of the gas being marketed at that time as ten cents ?

A That is the intention.

Q Now then looking at it from the producers standpoint by accepting the .63 cents for this two cent gas, the producer is actually financing the cost of holding that gas in the ground for fifteen years. Is that a fair statement ?

A Yes to the extent that by taking the discount price they are financing the repressuring, conservation of the gas for the period. Royalite in effect is the banker only.

Q And acting as banker Royalite is taking the risk of recovering the gas whether the amount will be finally recovered from the structure in which it is stored ?

A Yes.

Q And there is some deferred production of gasoline from the gas cap ?

A Yes there would be. The gas cap being closed in there would be

deferred production in that case.

Q And there is some risk that there will be a market for the gas cap gas when it is produced fifteen years from now. I am not speaking of repressured gas. I am speaking of the actual deferred production of the gas cap ?

A I would say there is always risk with that.

MR. STEER: May I ask a question arising out of that.

Q I do not follow you Mr. Mercer, when you say Royalite is a banker under this scheme. What I suggest to you is that Royalite is buying that commodity and it is paying what is its present value and it is holding that commodity for a period of thirteen or fifteen years or whatever the period of time may be for resale at that time. Now that is more the position than that Royalite is a banker ?

A Royalite in effect is purchasing all of the gas.

Q Yes.

A To the extent that they will wait fifteen years for the ultimate sale of the product. I alluded to that as a banking position.

Q They do not market the gas immediately or within a short time. They get a market a long time hence. That is all that it means does it not ?

A That is so.

Q Now then the producer has a commodity coming out of his well -

MR. McDONALD: Mr. Chairman, so that Mr. Steer may not miss the point which I understood Mr. Mercer made that when Royalite sells this gas fifteen years from now it sells it at the price today. That is not the proposition he put to Mr. Mercer.

Q MR. STEER: I put this proposition to you that the producer of the gas at the well head has a commodity to sell. Is that right ?

A Yes.

Q And he chooses to sell that commodity to the Royalite Company at a certain price. Is that right ?

A Well Royalite's submission is that they will buy that product at a certain discounted price at the present time.

Q And we are assuming that Royalite's scheme is adopted, that involves the Royalite buying that commodity from the owner of it at the well head, does it not. Or perhaps I should say buys it from Madison at the outlet of the scrubbing plant. Perhaps that is better ?

A Royalite is purchasing the product but giving the present worth of the product fifteen years from now.

Q Yes but the property is Royalite property in the gas, that is right, once this deal is made between Royalite and the producer of this gas then the property in the gas is Royalite's ?

A Certainly to the extent that the gas will be repressured in Royalite leases.

Q It is understood of course and agreed that this gas is going to be repressured but the property in the gas is Royalite's and continues to be Royalite's over a period of thirteen or fifteen years ?

THE CHAIRMAN: I suppose it is a question of law Mr. Steer.

MR. STEER: Perhaps.

Q MR. McDONALD: May I ask one question. When this gas is resold Mr. Mercer, the repressured gas that is repressured in 1945, what price is Royalite going to ask for that gas from the ultimate consumer ?

A Under its submission it is asking the price frozen so that it will receive the price set today.

Q It pays the producer .63 cents for that gas and it will ask the ultimate consumer two cents for that gas ?

A Yes that will be the principle of it.

Q That is the submission ?

A Yes.

Q Royalite is not going to speculate and ask ten or fifteen cents for that gas if that is the market price of gas being then produced ?

A That is not the intention.

CROSS-EXAMINED BY MR. BLANCHARD:

Q Mr. Mercer, I do not know whether you will be back again here, but it occurred to me to ask you whether you can tell us what Royalite considers to be a fair well head price. Are you in a position to answer that ?

A I am not in a position to comment on that.

Q Beg pardon ?

A I am not in a position to comment on that.

Q Do you know whether Royalite intends to make any representations about that at any time. Perhaps you are not in a position ?

A I am not in a position to say.

Q Do you know whether Royalite would be prepared to have a price fixed now for gas at the well head which will apply for all time to come in this field ?

A That is Royalite's submission Mr. Blanchard.

Q No, that only applies to purchased gas, but I am asking whether Royalite would be prepared now to have a well head price applied for the life of the field ?

A I am not in a position to answer that either.

Q In other words I suppose it is reasonable to assume that as time goes on and if gas becomes more valuable Royalite will expect a higher price for its gas. That is as a well head price. I am not referring to the frozen gas but to its other gas ?

A Certainly if it became more valuable.

Q Now why do you want to discount this for fifteen years. Why not five years or eight years, why fifteen years ?

A To the extent that it has been submitted I believe that repressuring will be in force for thirteen years and that it will take a further two years before the then reserves cannot meet the market demand. That would be a fifteen year period before it is anticipated that this repressured and conserved gas will have to be produced.

Q Then your submission is based on the assumption or based on the proposition that when repressuring stops that is the point at which the purchased gas will be considered to be on the market ?

A That is right.

MR. CHAMBERS: He did not say that.

MR. BLANCHARD: That is what I understood.

MR. CHAMBERS: He added two years on to that.

A Taking in the additional two year period at the time when the reserves at the time of repressuring cannot then meet the market demand. Then the repressured and conserved gas will go to the market.

Q MR. BLANCHARD: Now then taking Table 9 of Madison's statement in M-2-A I find that the last year in which any gas is repressured is 1951. I think 1951. That is six years from now. And the same applies to conserved gas I think. No, 1952 is the last year in which Madison considers there will be any gas conserved. Now having regard to those figures and those assumptions, can you say why you fix fifteen years as the period of discount for purchased gas ?

A In having this submission prepared the evidence to be given was taken into consideration. I would have to study the submissions again with a view of checking the exact years.

Q Well then, assuming that the predictions as contained in Table 9 of M-2-A are correct, would you say that the discount period should be six years instead of fifteen?

A I would like to repeat that again.

Q Would you repeat the question?

REPORTER READING: "Well then, assuming that the predictions as contained in Table 9 of M-2-A are correct, would you say that the discount period should be six years instead of fifteen?"

A Well it should be based on the length of time necessary for the repressuring and the conservation so as to bring it out to a point where the reserves are not sufficient to meet the market emands, whatever period that might be.

Q Yes.

MR. CHAMBERS: Pardon me, Mr. Blanchard, my information from my associate is that it is not the Table to which you refer.

MR. BLANCHARD: Table 9 is the one, and gives the year 1952.

MR. CHAMBERS: Those figures are actually based on M-2 revised, not M-2-A.

Q MR. BLANCHARD: Now, my learned friends have pointed out to me that Table 9 of M-2-A was based on a marketable reserve of 311 billion cubic feet, that subsequently there was submitted, and I had overlooked it, Table 8 of Report M-2 revised which is based on the marketable reserve of 361 billion cubic feet, and in the latter Table, that is Table 8 of M-2 revised, I find that the last gas stored by Madison Gas Company,

that would be in the Royalite gas cap, is 1954. 1954. So that that extends the period during which repressuring will be done in the gas cap for a period of 3 years over Table 9 that I mentioned, you see. Now then, you did not purchase any gas in 1944, of course, for repressuring?

A No sir.

Q Have you purchased any gas in 1945 for repressuring?

A Yes, I believe some purchases of gas have been made this year.

Q All right. Then in 9 years you will be through with repressuring, and would it be fair to say that that should be the period of discount of purchased gas rather than 15 years?

A Insofar as an engineering problem of that nature, I do not think I would be able to reply.

Q No, it is not an engineering problem. I want to know what time you are fixing as the time that your gas goes to market that you bought. Is it in the year that you stopped represuring or is it not?

A No, it would be in the year in which the reserves, the present reserves, were not capable of meeting the then market demands. That might take you beyond the last year of re-pressuring or conservation. It is anticipated it will take at least two years to do that.

Q Well when you stop conserving you are repressuring, when you stop repressuring you have come to the point where the market demand absorbs all the allowable gas?

A Under a scheme of this nature you have certain reserves when you start the scheme, and that must be taken into consideration against the market demand at the time of the termination of the repressuring or conservation.

Q Well then, let me ask you this, does your proposal contemplate

that you are going to dispose of the purchased gas that is stored in the gas cap before you sell the Royalite gas that is in the gas cap, that is, the gas you have not purchased; which goes to market first, the purchased gas or the other gas?

A No, it will all go together.

Q It will all go together?

A Yes.

Q I see. But instead of 9 years, which is the last year of repressuring, you make it 15 for the discount period?

A That is so.

Q And can you give me any better reason for that than you have already given?

A Only to the extent that the present reserves will meet the market demand with repressuring and conservation up to that point.

Q It would really pay you, would it not, to send your purchased gas to market at the earliest possible moment?

A I do not necessarily follow you there.

Q Will you read the question please?

REPORTER READING: "It would really pay you, would it not, to send your purchased gas to market at the earliest possible moment?"

A Certainly.

Q MR.BLANCHARD: Yes.

A Certainly, Royalite working on a discount rate, it would pay them to sent it at the earliest possible moment to the market. It is not contemplated though.

Q Because you are only making a net 4.8% on the money that you have invested in that gas, am I correct about that?

A I would not know what the net return would be.

Q Well if you are using 8% as your interest rate on the money

you are investing in gas, when you sell that gas you have to pay income tax on it, don't you?

A That is right.

Q And the income tax is 40%, if it is at the same rate as now, is that correct?

A That is correct.

Q So that would leave you 4.8% interest to operate on on that investment?

A That would seem to follow, yes.

Q Yes. Now, having that in mind, having that in mind, which would you send to market first, the gas you have bought on which you are getting interest at 4.8%, or your own gas that you have not bought that you had in reserve?

A This whole scheme, Royalite has certain obligations, particularly to Royalty holders that has influenced the suggestions as submitted, and it is anticipated that all gas, whether conserved, repressured or Royalite's own gas, formation gas, will be produced together and be sent to the market that way.

Q All right. It makes quite a difference to the producer whether he gets 1 cent or 1½ cents now, doesn't it, assuming that the well head price to be 2 cents, I mean, the period of discount makes a great deal of difference to the producer?

A It would, yes.

Q Yes, of course. Now I presume that the Royalite Company considers there is a fairly high risk in the storing of gas, that is, as to the prospects of recovering it all?

A There is some risk, yes sir.

Q Yes. And do you think you are fair to yourselves in agreeing to take 8% on the money you invest for stored gas?

A That matter was taken into consideration in arriving at the 8%.

Q You feel that is fair?

A In comparison to the value of industrial money, I say generally it is fair.

Q In comparison?

A Yes.

Q Yes. And out of that you pay the income tax, out of that 8%, that is invested in buying the gas?

A Certainly, if there were any income tax payable on the operations, the ultimate operations, it would be paid.

Q Yes. So your net return on the money invested in buying gas as we said will be 4.8%?

A I would not like to say exactly what the net return would be.

Q Well, it is 8% less 40% based on the present figures?

A Yes, based on that calculation.

Q All right. That has all been considered by Royalite and is considered a fair rate of return?

A Yes, the 8% as submitted is considered fair.

Q Very good. That is considered fair?

A Yes, as submitted.

(Go to page 2632.).

Q Now you put conserved gas on the same basis as the stored gas. That is you say "we should be able to buy conserved gas at the same price and on the same discount terms as stored gas"?

A That is so.

Q There is some difference though because you have a future source of natural gasoline in conserved gas, that is correct is it not?

A Yes, there would be a future source of natural gasoline in any gas that is conserved.

Q And is that a thing of any value to Royalite?

A Royalite will have a present loss of revenue through the fact that it is deferring the processing of that gas in its Absorption Plant for the conservation period.

Q Yes, I realize that. Now this 15-year period you have which possibly you and I are agreed should be reduced to 9 or 10. . .

MR. CHAMBERS: Just in that connection, I want to make Royalite's position clear that that is merely an offer by Royalite and that that offer is not to be modified by what this witness has to say in the box as his own personal views. Royalite says it is prepared to do it on this basis and my instructions are that they are not prepared to make the offer on any shorter basis.

MR. BLANCHARD: I am simply coming to the reason for it and so on. It is more or less a tentative offer.

MR. CHAMBERS: My present instructions do not indicate there is any immediate intention to change the offer in the light of . . . . .

MR. BLANCHARD: It will remain for the Board to say in any event.

MR. CHAMBERS: The Board may set up another scheme

altogether but I submit there is no power in this Act or any other Act for the Board to order Royalite any more than it might order a bank or somebody else to enter into a scheme such as this.

MR. BLANCHARD: I do not take the same view.

Q In that case this is a take it or leave it offer.

A That is Royalite's offer as submitted, yes.

THE CHAIRMAN: One expects that from a company such as Royalite.

MR. CHAMBERS: I submit that is a most unfair statement.

THE CHAIRMAN: All right, Mr. Chambers. Go on with your cross-examination, Mr. Blanchard.

MR. BLANCHARD: This 15-year period that is contemplated in your offer, is that 15 years from now or is it 15 years from each purchase of gas?

A It is anticipated that each year's purchase of gas will be produced 15 years hence.

Q In other words, when you make a purchase in 1950 that will be discounted to 1965, is that so?

A Yes. It is suggested that is the way it will work out, yes.

Q So you are going to hold that gas, theoretically you are going to hold that gas in the gas cap for 15 years no matter when you purchase it?

A Yes, that is so.

Q And be getting 4.8 per cent on your money if the same rate of income tax applies?

A We will get our 8 per cent gross.

Q Now what are the sources of income of the Royalite company? Where does it derive its income?

A From its activities carried on as an oil development and

producing company.

Q From its oil producing activities?

A And other allied activities.

Q Its natural gasoline activities?

A Yes.

Q And I suppose from its natural gas activities, at least from its dividends as a shareholder of Madison Natural Gas Company.

A It would have an income from that.

Q Are there any other activities of Royalite beyond those you have mentioned?

A It also derives income from being a shareholder in the Valley Pipeline Company of course, pipeline activities.

Q That is a public utility on which it gets a fixed rate of return.

A That is so.

Q So far as its natural gasoline business goes that of course depends on the life of the natural gas field in Turner Valley or elsewhere.

A Yes, from the gas available for processing.

Q What?

A It depends on the gas available for processing.

Q And so far has Royalite any oil wells outside of Turner Valley that are producing?

A No sir.

Q No. Its oil producing activities are confined to Turner Valley.

A Yes.

Q And what would say about the comparative risks between your oil business in Turner Valley and your natural gas business as derived through dividends from Madison?

A I am not in a position to answer that.

Q You are not in a position. Your shares pay 5 per cent, I believe, dividends?

A I cannot say what the market price of the shares is today.

Q Well what was the last dividend declared by Royalite?

A It declared a 50 cent dividend on the 1st of June last.

Q Is that an annual or semi-annual or quarterly dividend do you know?

A Not necessarily, dividends are called by the directors.

Q Let us take the year 1944, what were the total dividends paid by Royalite?

A Royalite paid a dollar for 1944.

Q A dollar per share?

A Yes.

Q A dollar a share, is that correct?

A It paid two dividends of 50 cents each.

Q Per share?

A Per share.

Q Do you know what the market value of the shares was during last year?

A I would only be venturing an opinion or making an observation. I do not know offhand Mr. Blanchard.

Q You do not know that that would represent approximately a five per cent dividend based on the market value of the share.

A If the share, the market value of the share was $20.00 it would.

Q And the shares were readily traded in on the stock market?

A I would not know.

Q THE CHAIRMAN: Don't you know that, Mr. Mercer?

A I certainly do not.

Q I have got the impression in the last 10 minutes that you are evading as well as and cleverly as you know how.

MR. CHAMBERS: I submit, sir, that this witness is

answering these questions frankly and I think that statement is most uncalled for.

THE CHAIRMAN: Mr. Chambers, you have no right to speak to me like that.

MR. CHAMBERS: I have a right to speak to you like that. When you make a remark like that when the Royalite Company has conducted itself as it has during this Hearing.

THE CHAIRMAN: Mr. Chambers, you are also being rude. I am presiding at this Hearing with Dr. Boomer. There is a witness in the box. I think perhaps he is evading as much as he can, both yesterday and today, and as presiding officer I am entitled to tell him that and I am going to tell him that.

MR. CHAMBERS: As representing the client appearing before this Board, I have the right to differ with you and to make my position clear.

THE CHAIRMAN: You have no right to speak to me the way you did. You would not dare to do that to a judge.

MR. CHAMBERS: I would.

THE CHAIRMAN: No you would not.

THE WITNESS: Mr. Chambers, may I say this, as an officer of the Company I am not entitled in any way to deal in the shares of the Company which we represent and officially I do not know what the price of the shares of the Company might be.

THE CHAIRMAN: You are not in the witness box as an official of the Royalite Company. You are a witness and whatever knowledge you have you will give that to Mr. Blanchard when he asks.

MR. CHAMBERS: Mr. Blanchard asked this witness if he knew the shares were freely dealt with on the exchange. I submit that this witnes - and I am saying this in all

sincerity and respect - that I certainly do not know. I know from gossip or take it for granted that they are dealt with on the exchange. They are quoted surely but the way exchanges operate today we do not know how many trades there sre.

MR. BLANCHARD: I suppose it is really a matter of common knowledge that we need not quarrel about but I thought I would like to have it on the record from this witness that is all.

Q You do not feel you are in a position to say?

A No sir, I honestly do not.

Q Now then, the risk of your business in connection with your oil operations depends largely on the production you get from oil; in fact it depends altogether on the continuation of the production from your oil wells.

A That is the prime operation of our company, yes sir.

Q And when those wells cease to produce oil then you have to look further afield if you intend to continue in the oil business.

A That follows, yes sir.

Q On the other hand, the gas business under regulation you are are insured of an income from your natural gas as long as there continues to be a market for it, that is correct?

A Certainly on a basis of that nature, yes.

Q And which would you consider involved the higher risk, your oil business or your natural gas business?

A Certainly the natural gas business owned as a public utility with a fixed rate takes out certain of the risks.

Q Yes?

A Yes.

Q You could not visualize a complete loss of market for natural gas as long as natural gas is there, under regulation as Madison is now.

A No, I do not think I can visualize any loss of market.

Q Even if other fields are found you can reasonably anticipate that you would at least share in the market?

A That is the only thing which made me hesitate there, was the fact of other fields being found might have a future bearing.

Q Yes, so that the only risk involved would be the complete disappearance of natural gas?

A That is right.

Q Yes. Now why do you consider that the consumers should pay a rate of return to Madison plus the income taxes on that rate of return? Why should the man who buys gas pay Madison's income taxes, can you tell me that?

A In that case I do not think I am qualified to answer the question.

Q Do you know of any business in which, - well let me put it this way, each individual and every merchant has to pay his income taxes out of his profits, that is correct is it not?

A That is so.

Q What?

A That is correct.

Q Yes, if everyone in the Dominion of Canada, whether he be a person or corporation, simply added his income taxes to whatever he sold his goods for or his services for, have you, as an accountant, any conception of what it would mean or what would happen?

A Is that not what is done in fact, you used an example of a merchant, he takes into consideration the income tax charge he has and he markets his goods accordingly.

Q Does he?

A Yes.

Q What about ceilings, that is the precise purpose of ceilings,

or one of the purposes?

A Certainly you have ceilings today.

Q Who ultimately pays the income taxes if everyone adds income tax to his salary or goods that he sells, who ultimately pays the income tax?

A The consumer.

Q The consumer, but he must add it to his salary too; all right, we will not pursue that. However, here we have a case in which these high war time taxes are added to the rate of return and the consumer is asked to pay them, that is the position, and I wondered if you, as an accountant, were in a position to say why that should be so in the case of the Gas Company and not in the case of a salaried person?

A No, I do not feel that I can answer that.

Q You cannot answer that? Allright. Now, Bow Island, there is a contract under which you are obliged to furnish gas to the Canadian Western Gas Company to the extent of the gas that is produced over and above your requirements?

A Yes.

Q And under the contract you have with them, you were to gather the gas and scrub it and put it into the Gas Company's lines, that is correct?

A We have certain gas available over and above the market, which we delivered to the Gas Company lines.

Q And you still have some gas available over and above the market, that you are in a position to deliver for storage in Bow Island, am I correct about that?

A I do not know offhand.

Q Royalite still, Royalite still has an allowable for crude wells, we will say, in excess of its market share, very far in

excess of its market share. am I correct or not?

A With repressuring, - if you do not take repressuring into consideration, no doubt there would be some gas available. Repressuring of gas is to take care of any of that surplus.

Q Well any gas in any event over and above the Royalite's share of the market, is available for repressuring?

A That is produced, yes.

Q Produced gas, yes?

A Yes.

Q And under this contract the Gas Company can ask you to send it to Bow Island, that is correct is it not?

MR. CHAMBERS: I submit that is a matter of law.

MR. BLANCHARD: What is that?

MR. CHAMBERS: That is a matter of law, it is an interpretation of a contract.

Q MR. BLANCHARD: Let us assume then that under the contract the Gas Company can say "You must send this to Bow Island"?

A Yes, if it is available by Royalite.

Q Then all that gas you send to Bow Island you have to pay the gathering and scrubbing costs on it under the terms of your contract, that is correct?

A There have been gathering and scrubbing costs.

Q And now your position simply is "let the consumer pay for that", that gathering cost and scrubbing cost "and we will still get our 4 cents", that is the position, is it not?

A Yes, it is on the individual volumes of gas.

Q It is cheaper to store gas in Bow Island, that is to say in the matter of incidents, costs, it is cheaper to store in Bow Island so far as the Royalite Oil Company is concerned,

than it is to store it in Turner Valley?

A Insofar as Royalite at the present time is concerned.

Q Yes, because the Gas Company assumes the cost of repressuring?

A Of course Royalite has no repressuring costs at Turner Valley today.

Q You do not know whether it has or not yet?

A No.

Q But at any rate if the gas is repressured, if Royalite gas is repressured under this agreement in Bow Island, the Gas Company pays the repressuring costs?

A That is so, that is the agreement.

Q And if it is repressured in the Gas cap, somebody else pays it, unless it finally comes on the shoulders of the Gas Company; all right, now we will go on from there to another matter.

Royalite has made three different proposals now as to the basis of the division of costs between Royalite and the Madison Gas Company, relating to the absorption gasoline; first of all, the first proposal is that 5% of the proceeds of the sale of natural gasoline should be kept by Madison to offset Royalite's share of the cost, that was the first proposal was it not?

A That is so.

Q That is so, and that was actually done for a time, was it not?

A Yes.

Q And it may be done now, I do not know, is it done now?

A I would have to be advised on that.

Q You would have to find that out, and the second proposal was when Mr. Latham came before the Board and suggested a division be made on the sales realization basis, that is the proportion of the sales of natural gasoline as against the sales of

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natural gas, is that correct?

A That would be the sales realization method, yes.

Q And at that time I think Mr. Latham said that that was a common basis for the division of installations used such as the installations in Turner Valley, do you remember that?

A Certainly it is a method which is in common use, particularly between departments of a company's operations, within the company itself.

Q Yes.

A It is not scientific, it is not a scientific method at all of distribution.

Q No. Now the gross revenue of Madison from paying customers for the year 1944 would I think be approximately 700 thousand dollars; if you accept that figure from me we can use it as a basis at least.

A I do not know what it is.

Q And I see that in your table attached to R-2, you put the anticipated revenue gross on the absorption gasoline business of Royalite, - no, you put the actual for 1944 at $593,905, that is the gross?

A Yes, that would be , that would run around a fair figure.

Q Now is it my understanding of Mr. Latham's proposal that the division of costs would be on the basis of Royalite paying the proportion that their revenues for 1944 we will say, as shown in your exhibit, in the proportion that bears to the gross revenue of Madison, is that the proposal?

A The sales realization method would mean adding the two gross revenues together and taking the proportion of one to the total, each one to the total.

Q Do you know why that proposal was departed from. Were you present at the session for instance ?

A Only to the extent that this whole matter having come up and discussing the pros and cons, going into the whole matter. The present submission by Royalite was felt to be one that was more equitable both from a service standpoint - a matter of service.

Q Certainly your present proposal involves the payment of a very great deal less by Royalite than would have been involved if the Latham proposal had been accepted. I do not suppose we need argue that.

A As I say the sales realization method as far as myself is concerned is one that is used particularly by a company in itself for distribution of costs between departments. They can be more readily applied but it is one that I do not think should be used outside of its own organization - outside of the company itself.

Q Well if you can get the other fellow to bear all the other costs that is good business. We do not need to argue that. Now I notice in your statement attached to your submission Exhibit 98 a sharp decline in revenues after 1946. Why have you anticipated the declines in revenue ?

A In preparing that submission I have used information as given to me by the Engineers and management.

Q Is that decline simply due to the fact that you won't be producing the gas cap ?

A No it is my understanding that there will be a reduction in volume of production in the plant.

Q You will still be processing the full amount of gas that is produced in the field ?

A That is a question that I do not think I can answer at the

present time. I will have to be advised on that.

Q Now then there is only one other question and I am only asking you this because I do not know whether any other Royalite officials will be here to answer questions. If Royalite had sold its natural gas utility gas business to a stranger would it have sold that business for shares as it did to Madison, or would it have obtained a mortgage on the property for part of the purchase price at least. Can you answer that ?

A No sir.

Q You cannot ?

A That would be a matter that would have to be considered by the Royalite Board of Directors.

Q Perhaps it answers itself. All right, thank you.

EXAMINED BY THE BOARD:

Q DR. BOOMER: Mr. Mercer, in your internal bookkeeping in Royalite do you have more than one system of allocating costs, that is for overhead and general service costs in the same division ?

A We have actually made no distribution of general overhead costs between divisions, Dr. Boomer.

Q You do not do that at all ?

A No sir.

Q You have no special purpose for which you do that ?

A We have after the formation of the Madison Company - we have departmentalized our books for the current year 1945 to a certain extent, but to make a direct distribution of all the overhead costs we have never done that in our books.

Q What I am driving at is prior to 1944 you had only natural gasoline and crude oil divisions. You did not allocate the general overhead costs and costs of power plant, water system

as between those divisions ?

A We would make an allocation of our power plant and electric plant, water system and so on on a basis of use. Water was usually set out on a price comparable to what water was worth in the district. The services with the boiler and electric plant that was usually distributed on a basis of a field engineer's percentage of use of the several units or departments using the services.

Q Did you distribute the costs of gathering lines as between natural gas and natural gasoline ?

A No sir their costs were maintained separately but no subdivision was made. No division was made as between natural gas and absorption plant except for statistical purposes but not in the books.

Q That is so far as the public balance sheet it would make no division ?

A No division.

Q But for your own internal records you did not allocate costs of common services as between departments ?

A No, not for the official records and books of the company.

Q THE CHAIRMAN: How did you arrive at the basis upon which you would divide the gasoline content between your company and the producers if you did not know or had no allocation of your general overhead to that particular operation ?

A We did for statistical purposes make a distribution in statement form using the realization method of distribution over the years of operations, using the same form of distribution that was a yard stick or guide as to the various operations.

Q How did that allocation which you made for statistical purposes compare with the volumetric method which you are using in Exhibit 98 ?

A It would compare the same as the realization method suggested by Mr. Blanchard - spoken of by Mr. Blanchard in comparison to it.

Q And that method would not be as favourable to Royalite as the volumetric method, is that right ?

A It might prove so sir.

Q DR. BOOMER: Did you, Mr. Mercer, have anything to do with decisions regarding construction and extensions to the gathering system ?

A No sir.

Q Would your field staff advise that the gathering line should be built. They did not refer it to you for consideration ?

A No sir.

Q You know nothing about it ?

A No.

Q As an accountant would you care to express an opinion as to whether or not the Madison Company uses the same principles and analyses in determining whether or not a gathering line should be built as used by Royalite prior to 1944 ?

A As a matter of capital construction it was one for consideration of the management. I am hardly in a position to answer the question.

Q In your submission you used the volumetric method of distribution of costs of gathering lines. I presume the Madison Natural Gas Company is not interested in any way in natural gasoline other than the revenue it can get ?

A That is so.

Q If Madison Natural Gas Company said they were not interested in that revenue for the reason that revenue plus its revenue from residue gas would not support a particular line, is it possible that the revenue from natural gasoline to Royalite

would make it profitable for Royalite for subsidize Madison over and above the proposals you make ?

A That would be a matter that would have to be considered by the management as it came up.

Q As Secretary you would have nothing to do with those decisions ?

A I might be asked to go into the problem upon information.

Q Is it conceivable that the situation would arise where particular extensions to the gathering lines would not be profitable to Madison but would be profitable to an integrated operation between Madison and Royalite ?

A That might arise depending upon the gasoline content of the gas and other features of that nature.

Q That is it is possible that Royalite would build any line in 1942 that would not be built by Madison if Madison had built in '43 ?

A Would that not depend -

Q That is assuming your submission ?

A Upon the Utility Board authorizing such a line.

Q Well the Utility Board would look to see if the line could be paid out and if it could not be paid out on your volumetric distribution plus the revenue from natural gas, but could be paid out with natural gasolines taken into account, would it be reasonable for Madison to say to Royalite, you pay up more than the volumetric method ?

A Certainly it would be reasonable to make a proposition of that nature, yes sir.

THE CHAIRMAN: That is fair where it is a gathering line - would it not be equally fair over the whole system ?

Q DR. BOOMER: Can we take your submission as the minimum offer to Madison that might be realized upwards as circumstances dictated ?

A I think sir, that is a rather hard question for me to answer and any decision would have to be considered.

Q There are one or two other points I am not clear about that arose out of your cross-examination. Royalite does not pay the cost of repressuring does it ?

A No.

(Go to Page 2649)

Q And Madison pays the costs of repressuring?

A Madison pays the costs of repressuring.

Q And Royalite proposes to pay Madison for the repressured and conserved gas, in the case of your example, .63 cents on a 2 cent current market price?

A Yes.

Q And Madison will hand that on to the producers?

A That is right.

MR. HARVIE: I did not catch whether you said that this figure was for repressured gas or for repressuring the gas?

DR. BOOMER: For repressured and conserved gas.

MR. HARVIE: It is not for the repressuring operations.

DR. BOOMER: No.

Q Then essentially what happens, the transaction between Royalite and the producer, the consumer through Madison pays the cost of the mechanical operation of repressuring?

A Yes.

Q That is all with respect to that. And Royalite will in 15 years, assuming your figure is correct, resell that gas, not to the consumer but to Madison at 2 cents?

A Yes sir.

Q And it is of no concern to Royalite if the price of handling the gas to Canadian Western Company or to Madison's customers has gone up or gone down from what it is today?

A Insofar as the repressured and conserved gas is concerned.

Q You are only concerned with getting that 2 cents from Madison?

A Yes.

Q And what Madison does after that with it is not your concern?

A To the extent that Rovalite has completed its work with that section of the submission.

Q The present day consumer will be paying the operating costs of the repressuring operations, and the consumer 15 years from hence gets the benefit of those expenditures of today. Assuming that the consumer 15 years hence is not the consumer of today, can you justify charging the consumer of today with that repressuring cost ?

A For the assurance of a supply of gas 15 years hence, it would seem warranted, sir.

Q You would put it in the same class as casualty insurance?

A In a sense yes.

Q In your submission R-3, Exhibit 99, on page 5, you discuss royalties. Am I correct in assuming that you will pay royalties on repressured gas at the time of its original production, not on the time of its production to market?

A Yes, that would be the situation.

Q That is, you would pay royalties on the repressured price of that, as I understand it, now?

A Yes, the idea being that this repressured gas is being produced from different areas of the field, different ownerships, and as such they are having their gas produced today instead of waiting 15 years, and the royalties will be paid, you do not have to wait, and then it is transferred to one account, one ownership, for the whole of the 15 years, and then ultimately produced for consumption, but the royalty has been satisfied on it in the first instance.

Q Yes. Has the Royalite any assurance that when they reproduce the gas in 15 years, the mineral rights owner would not demand something on it?

A The whole thing will have to be done by agreement. The whole thing will have to be carried out by agreement.

Q Would it not be simpler if the original producer of the gas was paid, paid the royalties only on production for consumption on the market?

A You would then have a multitudinous ownership in the repressured gas in the field. Someone would have to be responsible for the tremendous volume of bookkeeping to keep that ownership satisfied, or the owners, so that they would ultimately get their proper share.

Q Well I am no bookkeeper, but in Item 3 on Page 5, it seems to me there is a great deal of bookkeeping too, inasmuch as you must assume a reserve and when reproduction of repressured gas begins, you make a settlement of the royalty on a proportionate basis. It means a lot of arithmetic. If each producer in the field retained title to the quantity of gas that was repressured the royalties could be paid assuming or using the same proportion. I do not think it would save any bookkeeping. It would save Royalite a great deal of bookkeeping if they did not have to pay the .63 at the moment to Madison, and Madison distribute it?

A There might be a question there as to the area in which the repressuring would be taken. I do not know whether everybody would be agreeable to having repressuring done in their lease where there would be a joint ownership, a multitudinous ownership of the gas in that lease.

Q Would it simplify the matter if the Conservation Board acquired title to the input wells and all rights thereto and froze the allowables to each well in the gas cap as of now?

A Well that would be a problem that would have to be studied, sir.

Q Well it has been studied?

A Myself, I could not answer a proposition like that.

Q THE CHAIRMAN: Or by making the gas cap a public utility for the purpose of the storage gas, it could be done, couldn't it?

DR. BOOMER: It would have to be pooled.

THE CHAIRMAN: Quite right.

Q DR. BOOMER: You have not given any consideration to the pooling idea that I have been suggesting?

A Not myself, Doctor.

Q That is all.

THE CHAIRMAN: We will adjourn now.

(At this juncture a short adjournment was taken).

CROSS-EXAMINATION BY THE CHAIRMAN.

Q Mr. Blanchard mentioned to you three different bases of computing the distribution costs from the separator to the absorption plant had been considered. Then you stated, and it is in your submission, that the volumetric method was considered the most equitable. I suppose you know, Mr. Mercer, that transportation companies, railroads, buses, trucks, ships classify their freight and charge accordingly.

A Yes I know that.

Q Did you consider any method of classifying natural gasoline and gas for arriving at a proper distribution of the cost of gathering and transporting to the absorption plant?

A Only to the extent of the method as submitted, the volume method.

Q But that is not a classification of your freight at all. A ton of coal and a piece of valuable machinery which might take up only a few cubic feet would carry a vastly different freight rate on a train would it not? That is a classification of the articles being carried.

A Yes.

Q Volume has nothing to do with it. Have you considered any method of classifying the two commodities that you carry to arrive at another equitable method of distributing costs?

A No sir.

Q I suppose such a thing would not be impossible.

A There would have to be a certain amount of arbitrary application, sir.

Q And in the end, in the final analysis does it not get down to gross revenue even though you classify it, does it not get down to a question of revenue?

A Certainly realization is taken into consideration, yes.

Q That is right. So that we really have it that for years transportation companies have fixed freight rates on what might be called the realization method to them.

A In line with the risks they have in carrying goods, yes.

Q That is right. Supposing there is no question of a market for the dry gas. Let us assume we are bringing wet gas from the well head to the absorption plant and let us assume that you must flare the gas after you have taken out your gasoline, what are the economic factors that induce you to build a line or make you decide that a line could not be built.

A The volume of product available and the market for such product.

Q Over what length of time do you write off such a line? Is there any rule, in other words, in the gasoline business related to the write-off period, which induces you to build or not to build a gathering line of that kind.

A Yes. First you take the life of the actual line, the physical life and the length of time you would consider that you could return your investment or have available products for processing.

Q That is the theoretical method. What do you do in actual practice? Over what length of time do you write off a gathering line of that kind?

A Royalite in handling its gathering lines write them off over a period of 10 years.

Q Would I be right in assuming that the gasoline content is a more valuable unit than the gas in which it comes? You have an average recovery.

A There is an average recovery.

Q Per 1000 cubic feet of gas?

A I think it might be a little more valuable.

Q And if we assume this 2 cents that you are talking of per

thousand cubic feet, what is the relative value of the gasoline which you extract? What is the ratio, 2 to 1 or 3 to 1 or 4 or 5?

A Offhand I cannot answer that, Mr. Blackstock.

Q You spoke, Mr. Mercer, of statistical information that was used in the internal economy of your company and in the statistics you have filed you have an allocation of the costs to various units of your whole operation.

A Yes we have.

Q Are those available?

A They are made up primarily for income tax purposes.

Q But are they available?

A I think they are.

Q And they naturally are the property of the Royalite?

A The Royalite Oil Company.

Q You are the secretary of Royalite?

A Yes.

Q And those records will then be in your custody?

A Yes.

Q What would your opinion be, Mr. Mercer, if you had the problem that we have. Would you prefer to arrive at a decision on engineering estimates and probabilities or would you prefer to arrive at your decision on a known basis that is in existence and has been in existence for some years. Or would a combination of the two be very valuable in arriving at this decision?

A It would seem reasonable that what information is known of the operations should be considered.

Q Now you are asking for a discount rate of 8 per cent per annum on repressured and conserved gas. You are asking for 8 per

cent because of the hazards that are involved in storing, loss by migration and that sort of thing. Are the total hazards of Madison's operations in collecting, scrubbing, repressuring and delivering to the market equal to, greater than or less than the hazards in storing gas in the gas cap?

A I think that the difference of monies invested there might be considered a slightly greater hazard there, sir.

Q In which?

A In Madison's position.

Q Why? You see your hazards are physical. You may lose your field. You may lose your market. Those are physical things. You may lose gas in the gas cap through migration. Your capital is involved. But what is the relationship between the actual physical hazards in the one operation and the other? Are they the same or is there a difference between them and, if so, what is the difference?

A As I see it, the greatest difference between the two is the amount of capital investment which you have. With the Madison company it is a greater volume invested and you have a greater risk.

Q You are handling a greater volume of gas and a greater revenue in Madison than in repressuring the gas cap. It is all relative. Your capital and your volume are relative in both cases but what is your hazard? I want the relativity of your hazard in the two cases, your physical hazard.

A I have never studied the question from the angle you put it to me, sir.

MR. BLANCHARD: May I suggest that this be put, that all the hazards borne by Madison apply to stored gas plus the hazard of migration because in the end the disposal of the stored gas depends on the same consideration as Madison's.

Q THE CHAIRMAN: What I am getting at, Mr. Mercer, is this, that in the case of conserved and repressured gas you ask for a discount figure of 8 per cent per annum and in the case of the Madison company you are asking for 9½ per cent per annum, free of income tax. Now is the hazard relative to those figures and if so, what is the relativity?

A Madison is a complete unit of operation in itself. Insofar as Royalite's application for repressured and conserved gas, it is a part of its operation and taking in mind the earning power of industrial capital at the present time, plus a reasonable percentage for the hazards of loss of gas and so on, 8 per cent seemed to be an equitable percentage.

Q Based upon what? I mean is it based on anything concrete or is it more or less a reaching up and picking a figure out of the air and saying "we think that would be fair". Or is it arrived at on some scientific basis?

A It is the rate I was instructed to submit, sir.

Q You had no part in the . . . . . .

A In the arriving at the actual rate.

Q In the arriving at the rate?

A No.

Q Did you sit in on any of the discussions when that rate was arrived at?

A No, sir.

Q Was that done in Calgary or in Toronto?

A I think that it was discussed both in Calgary and Toronto.

Q Where did it originate?

A I do not think I can answer that question.

CROSS-EXAMINATION BY THE BOARD.

Q DR. BOOMER: I am curious about your remark that 8 per cent appeared to be a rate of return that industrial capital can earn.

A I think it is a little less than that, Dr. Boomer.

Q I did not finish. You added something about risk in this venture here. Can you give us evidence or justification for saying that industrial capital is worth a little more than 8 per cent? Where did you get that statement from?

A I think a study of the returns on invested capital throughout Canada might give a figure that would be very close to that, sir.

Q But you cannot advise us . . . . .

MR. CHAMBERS: If the Board pleases, a witness I plan on calling next week will have that information and will be in a position to deal with that.

Q THE CHAIRMAN: The thought I had in that connection, Mr. Mercer, was assuming that a stock began to earn 9 per cent per annum, it goes up on the exchange and that has some relation to the value of money. If you buy it at that higher figure you cannot get 8 per cent value, is that not right?

A That would follow, yes.

Q So that commercial money is not worth and does not earn 8 per cent per annum, unless you happen to have bought the stock many many years ago at par or below par. Even then if you had done that you would have money invested in stock which you could sell and realize money on it and you are perhaps losing money by keeping it.

A Yes.

THE CHAIRMAN: Any further cross-examination?

Re-CROSS-EXAMINATION BY MR. McDONALD.

MR. McDONALD: I was thinking, Mr. Chairman, that since reference has been made to these two contracts between the Gas Company and the Royalite Company, one in 1921 and one in 1925, I have had a chance to look at them and I am just wondering, Mr. Mercer, if you were in Alberta in 1921. When did you come to Alberta?

A I have been living in Alberta since 1910 off and on.

(Go to page 2660).

Q Were you in Calgary in 1921 or thereabouts ?

A I may have been. I left Calgary in the early twenties.

Q Can you tell me what was the state of the gas supply for the City of Calgary in 1921, was there ample gas or a scarcity of gas ?

A Well I can make a personal observation that occasionally we had to go down to the coal yards to get a sack of coal.

Q Yes. Now then it was in 1921 then I take it from these contracts that the predecessor, the company that owned the three gas wells which are now known as Royalite #1, #2, and #3, made that gas from those wells available for the Gas Company by a pipe line that the Gas Company completed west to the Turner Valley field ?

A Well in studying the records of the Company, the original records, I would say "Yes, I have gained that".

Q Now I suggest to you it is perfectly reasonable that the whole, the primary purpose of the origin of the Royalite Company was to take over the three gas wells and develop a gas supply for the Canadian Western Natural Gas, Light, Heat and Power Company, is that a possible or a reasonable assumption ?

A Well from my own knowledge I would not know that, Mr. McDonald.

Q That that was a reasonable assumption in view of the fact that there was no gas available or very little gas available ?

A It might be a reasonable assumption, yes.

Q Now do you know whether or not the gas supplied by those three wells, #1, #2 and #3, was produced in the Madison limestone or not ?

A I cannot tell you offhand.

Q In any event have you looked over this contract of 1921 recently ?

A Not recently.

Q One of the provisions is that any subsequent wells or further

wells drilled on Section 6 should also come within the terms of the contract, now I would suggest it is reasonable to suppose from that statement that the Royalite Company was expecting to drill further wells in Section 6 ?

A From the tone of the contract, yes.

Q For the purpose of supplying gas to the Gas Company ?

A It will follow, yes.

THE CHAIRMAN: In the first well what were they drilling for ?

MR. McDONALD: I do not know but I am just taking it from 1921 on.

MR. HARVIE: I think I can submit evidence on that if the Board wishes.

MR. McDONALD: I am just coming to 1921, and then when we come to 1924 we have the Royalite #4 coming into production, do you know what limestone that well produced from ?

A No sir.

Q And then we find that a further contract was entered into and this contract in 1925 provided that the production from any wells drilled by the Royalite within fifteen miles of Sections 6 and 7 should be made available under the terms of the contract ?

A Yes, there was a raise.

Q Now I suggest to you that in any Royalite Company's drilling of wells at all they would contemplate the sale of the gas that would result from the drilling of the wells ?

A They certainly had a contract to supply gas.

Q And the idea would be, the purpose of the Royalite Company in developing that field, would be to produce gas ?

A They would have to protect their contract with the Canadian Western, yes.

Q DR. BOOMER: Is it not true that any drilling today and for some time before today contemplated or considered the fact that they will get gas when they get oil, although they may get gas without it ?

A Personally that is true, there may be oil produced with gas, also oil produced without gas.

Q Would the Royalite Oil Company or any oil company give consideration to the economic problems of marketing the gas, while developing an oil field, another oil field than Turner Valley, would that not be so, that they would consider the gas production, perhaps you do not know ?

A They would not ignore it sir; certainly if a market is available for gas they would look into the matter.

Q It would be fair to say that gas and oil is found together, mixed up ?

A I cannot answer that from any technical knowledge.

Q So far as operations are concerned do you know any Oil Companies that are not concerned with gas or which do not bother with it ?

A Locally, no.

DR. BOOMER: I am sorry, Mr. McDonald.

MR. McDONALD: That is quite all right.

Q MR. McDONALD: Now with regard to the submission by the Royalite Mr. Mercer, I put it to you this way, there is the problem of repressuring gas in Turner Valley which has arisen, is that not so ?

A Yes.

Q Now then in its submission the Royalite Company is seeking a solution for that problem ?

A That is so.

Q They are vitally interested because the Royalite Company produces in the neighbourhood of 50%, between 40% and 50% of all

of the gas and oil produced in Turner Valley, as a producer, a producing company ?

A They do produce some considerable quantity.

Q A considerable quantity ?

A Yes.

Q So that you are looking for a solution that will be fair to the producers other than Royalite and of Royalite itself ?

A Yes.

Q And you are thinking of a solution that would be fair to the sonsumer of gas ?

A Certainly.

Q And you are also looking for a solution that is practical from an engineering and mechanical standpoint ?

A Yes, keeping in mind the protection of all interested parties.

Q Yes, and in arriving at that solution you have used a greater discount, a period of time for discount and suggested a means of having the Royalite Company act as a bank, so called, with the idea in mind of providing a reasonable solution for the whole problem ?

A That is so.

MR. McDONALD: That is all, thank you.

THE CHAIRMAN: Mr. Mercer I think you told Mr. Blanchard you had nothing to do or took no part in the discussions out of which the capital structure of the Madison Company was built, when Royalite sold Madison, it took common shares of Madison stock for the purchase price ?

A That is so.

Q I think you said you took no part in the discussions which led to that transaction being entered into in that way ?

A No formal discussion.

Q No. As an accountant and keeping in view the public interest would it not have been possible for Madison to have financed its operations by a Bond issue and saved on income tax by so doing, - that would result would it not ?

A That would be a problem which would have to be studied, Mr. Blackstock.

Q Is it not quite simple; your Bond interest would be deductable from your revenue before you paid income tax would it not ?

A Yes.

Q Yes, so there would be a saving if the Company had been financed that way. Have you any idea at all why that was not done, or do you know if it was discussed ?

A Only to the extent that there would be the problem as to where the money, the investment would come from, the investment money would come from.

Q I assume it would come from the same source that it came from today except you would have your security in a different form, but that is all right, Mr. Mercer. Thank you.

Any further cross-examination ?

MR. STEER: May I ask one question sir ?

THE CHAIRMAN: Yes.

CROSS-EXAMINATION BY MR. STEER CONTINUED:

Q I understand Mr. Mercer, in answer I think to Mr. Blanchard you said that the risk involved to Madison was the complete disappearance of natural gas, do you recall that ?

A No, I do not offhand, Mr. Steer.

Q What I was going to suggest to you was that one of the great risks that Madison faces is that the price of gas, of the gas which it is going to sell to whatever market is available, is

placed so high that gas will be sought elsewhere, have you given any thought to that ?

A That is a problem of course which is in front of one at all times, if another supply more economic will be discovered.

Q Yes, quite, and you may or may not know that since this question was last canvassed, very much larger quantities of gas in the immediate vicinity of Calgary have been discovered, do you know that ?

MR. CHAMBERS: Are you giving that as a fact ?

MR. STEER: No, I am not. I am suggesting it.

Q MR. STEER: You may or may not know that ?

A No I do not.

MR. FENERTY: We will be giving you evidence on that.

Q MR. STEER: Now you suggested, you said to my friend Mr. McDonald that you drew inferences from these contracts of 1921 and 1925 to the effect that the original developments in Turner Valley were gas wells and not oil wells, did I understand you correctly ?

A Only to the extent that the agreement was entered into for the supply of gas.

Q Yes.

A I think - -

Q I think I pointed out to you yesterday that Royalite wells #1, #2 and #3 were drilled with no contract for the delivery of gas at all to anybody ?

A That is quite right.

Q Is that right ?

A Knowing the general background I believe the original wells were started before 1921.

Q Quite so and then I think I also pointed out to you yesterday

that there was an order of 1921, in the latter part of that year, directing the Gas Company to augment its supply and it was as a result of that order that the contract of 1921 was made which connected up that gas supply with the Canadian Western system, is that right ?

A I of course have no knowledge of the order that you refer to Mr. Steer.

Q You may assume that that is so. You would not from that state of fact draw any inferences that Royalite #1, #2 and #3 were drilled for gas would you ?

A Not necessarily.

Q No, not at all, not only not necessarily but not at all; you could not possibly draw that inference could you from those facts ?

A Knowing that Royalite #1 was drilled before the last war, in, I think it was 1912 the drilling started, I have no knowledge of the reason behind the drilling of the well.

Q Quite so. I am going to suggest to you you know enough about the oil business and enough about the gas business probably to appreciate this, that if that Turner Valley area had been developed as a gas field its development would be entirely different from the development which has occurred ?

A That may be so, Mr. Steer.

Q I am suggesting to you that the area, the whole area of Turner Valley is some thirty thousand acres ?

A I do not know what the acreage would be in the Valley.

Q Would you be prepared to say anything as to this, that if that area, whatever it is, in Turner Valley, had been developed for the purpose of supplying natural gas as fuel it would have been developed by the drilling at the outside of forty to

fifty wells, would you say that ?

A I would not be in a position to answer that question.

Q Do you know how many wells have been drilled in that area ?

A In the total Turner Valley area ?

Q Yes.

A Oh no, no, but I could venture a guess.

Q You might do that.

A It might be in excess of three hundred.

MR. STEER: That is what I thought.

DR. BOOMER: Mr. Steer I was interested in your remarks that a larger supply of gas had been discovered nearer Calgary, will you put in that evidence ?

MR. STEER: Have I any evidence ?

DR. BOOMER: Yes.

MR. STEER: No, I have not any evidence, but it may be that such evidence will be developed.

MR. FENERTY: I might say to the Board, my present idea is that we anticipate asking the Board at some period to re-open that part of the Enquiry dealing with reserves elsewhere with a view to augmenting the evidence which was given by Mr. Galloway as to the extent of the area of gas supplies in the Princess areas and the areas east of here, by reason of developments which have occurred since his evidence was given. We hope and expect that that evidence will indicate very substantially greater reserves than he estimated rather than less as suggested by some witnesses of the Royalite Company.

DR. BOOMER: Were you, Mr. Steer, referring to the Princess area ?

MR. STEER: I was referring, I had the Princess in my mind, I had the Princess area and the Jumping Pound area.

DR. BOOMER: I understood you to say it was an area closer to Calgary, I may have heard you wrongly.

MR. STEER: No, I thought I said "near Calgary", which would be contributary to Calgary. I do not think I said "nearer", no.

MR. CHAMBERS: I take it that the evidence to which Mr. Fenerty alludes is to be offered, I mean if it is to be offered that we will have a report of a technical nature which we may study before the witness is actually called.

MR. FENERTY: That is the intention.

MR. CHAIRMAN: Have you any further questions ?

MR. CHAMBERS: I have some questions in re-examination.

RE-EXAMINED BY MR. CHAMBERS:

Q Mr. Mercer, I may not have got this clearly but I understood you to say in answer to the Chairman that your view was or your impression was that the railroads fix their rate base on what is to be realized by them ?

A I do not recall that, Mr. Chambers, and I did not intend that. I do know that the railways, they do have different rates for different commodities.

Q Oh yes.

A And I understood from Mr. Blackstock that because of the value of the commodity there would be a different rate for the carrying of different products.

Q Do you know that that is so, that the freight rate depends somewhat on the value of the products shipped ?

A I do not know it, I assumed that.

Q You assumed that ?

A Yes.

Q You do not know or do you know whether the freight rates for shipping a bale of straw is the same or higher or lower than the freight rate for shipping a bale of hay of the same size and weight ?

A No, oh no, I do not know on those specific items.

(Go to Page 2670)

Q Do you know whether the railroads have a different rate for shipping say cream than they do for milk ?

A No sir.

Q Or that they charge more for the weight of the cream content in milk than they do for the skim milk content ?

THE CHAIRMAN: In this case who gets the cream Mr. Chambers ?

MR. CHAMBERS: The consumers.

Q Now yesterday during the course of your examination in chief you alluded to the statement that was contained in Exhibit 98 and reference was made to the fact that no allowance had been taken into consideration for the fuel gas that is returned to the north end ?

A Yes sir.

Q Now over night you have had a statement prepared along the same lines, but including that gas as being paid for by Royalite. That is the transportation charges ?

A That is so.

Q Have you a copy of that ?

A I am sorry I left it.

MR. CHAMBERS: If the Board pleases I would like to tender that as an Exhibit.

STATEMENT SHOWING ROYALITE GASOLINE PLANT REVENUES, ETC & CHARGES, NOW MARKED EXHIBIT 100.

Q Mr. Mercer, will you just explain the difference between this Exhibit 100 and the statement which appears on the last page of Exhibit 98 ?

A The schedule attached to Exhibit 98 used the volumes being chargeable against the absorption plant as per Madison Report M-12 without regard to the return fuel going through the

[illegible]

[illegible]

[illegible]

north return fuel line. The revised statement applies to the anticipated volume of gas going through the north return fuel line as a charge against Royalite.

Q And the reason that is not shown in Exhibit 98 is that the Exhibit was prepared prior to the matter being discussed and the statements made during Mr. Kirkpatrick's evidence ?

A That is right sir.

Q Would you turn Mr. Mercer to Exhibit 99 and in particular to the Bow Island repressuring agreement which begins on Page 7 and you will note by Clause 8 that"the Canadian Western Company agrees to furnish the Royalite Company with bi-monthly statements showing the amount of natural gas delivered at the Bow Island Compressor Station, the amount of natural Gas consumed by the compressors and the amount of natural gas withdrawn from the Bow Island field, together with the meter charts verifying the above". As I understand it the Gas Company has from time to time furnished that evidence or that information to Royalite?

A Yes sir.

Q And in order to get the whole picture I had Mr. Mercer prepare and compile a statement of that information. You have a copy ?

A Yes sir.

MR. CHAMBERS: And I will tender that as an Exhibit.

STATEMENT, GAS STORED IN BOW ISLAND AUGUST 4/1930 - FEBRUARY 28/1939, NOW MARKED EXHIBIT 101.

Q Just tell us what Exhibit 101 is Mr. Mercer ?

A It is a statement of gas which has been stored in Bow Island from August 4th, 1930, through to February 28th, 1939, that is the date from which repressuring ceased up to that time.

Q And that statement is compiled from information supplied to Royalite from time to time by the Gas Company in accordance with

the terms of the contract contained in Exhibit 99 ?

A That is my understanding.

Q Now I notice that there is nothing shown beyond 1939 except what you have in the footnote. Tell us about that.

A From 1939 up to the present year there was no gas available for repressuring in Bow Island and the repressuring was such that it was stopped in 1939.

Q Have you had any statements from the Gas Company showing the amount withdrawn in the terms of the contract ?

A No sir, as far as I know there has been no statement showing withdrawals.

Q So far as Royalite's information is concerned there has been none withdrawn within the terms of the contract ?

A Yes.

MR. HARVIE: I wonder if we can take that as a fact ?

MR. STEER: Yes there have been no withdrawals.

THE CHAIRMAN: Any further cross-examination Mr. McDonald ?

MR. McDONALD: No sir.

THE CHAIRMAN: That is all Mr. Mercer.

APPLICATION

MR. STEER: I think I will not add anything to what I have said previously. My friend Mr. Fenerty has put down in black and white what he requires and I will allow him to present it.

MR. FENERTY: If the Board pleases at one stage in these proceedings I proposed to launch an Application following the examination of Mr. Kirkpatrick for a certain document and that was adjourned at that time because of a possibility of some Amendment being made to the Act and was not proceeded with.

[illegible]

[illegible]

[illegible]

I propose to ask that as an incident of cross-examination of a witness not necessarily by reason of the terms of the Act, but because of the situation we now have that the Royalite Official coming on the stand volunteered evidence and making statements as a necessary part of the cross-examination of that witness as to some of the statements he has made that certain documents be produced.

Now in the discussion here this morning it was mentioned that Mr. Hamilton has had access to certain accounts, financial statements for the year 1943, which it is not proposed in the first instance to have made available for general use. At the time we proposed to launch that Application Mr. Harvie suggested to me we should ask for the similar figures and statements with reference to 1942. At the moment I see no particular purpose for asking for that except as a check on the figures involved in 1943 should it turn out in examination that there is some abnormality with reference to that year that it did not represent a normal operation and another year might afford a check and that is a matter that may be gone into later.

The things we are interested in are the financial statements of Royalite Company showing costs and results of Royalite Company's operations for the years 1942 and 1943 and for the moment we will say 1943 which are already available.

MR. CHAMBERS: Is my friend asking for 1942 ?

MR. FENERTY: I think we can dispense with it.

MR. CHAMBERS: I would like to know if you are dispensing with it or not.

MR. FENERTY: All right, 1942 and 1943.

MR. CHAMBERS: You are asking the Board to make an Order.

MR. FENERTY: I was prepared for the moment with 1943.

THE CHAIRMAN: Mr. Fenerty said 1943, but he would dispense with 1942 in the meantime.

MR. FENERTY: If the examination of the records of 1943 make it necessary, but I do not want to put you to the trouble of that if it is not necessary for you because I also want the Royalite statements showing results of the Royalite Company and departments of the Royalite Company as integrated departments of the Company for those years. In addition we are asking for the production of documents referred to by Mr. Kirkpatrick in his examination before this Board. I have before me Volume 28, and at page 2179 of Mr. Kirkpatrick's examination by myself, there appears a reference, commencing at the bottom of page 2178:

"MR. FENERTY: If you will just glance through the remarks of the Chairman, the questions by the Chairman at the bottom of page 1900 and come over to 1901; it refers to statements prepared in connection with the various branches of the Royalite Company's operations and you are asked at the top of page 1901:

'Q But that is the purpose of preparing statements as far as can be done scientifically with relation to each Department.

A That is correct.

Q So that the manager will know what is going on?

A Exactly.'

Now I want you to note that question. "As far as can be done scientifically" for each Department and you say "That is correct" and then going on:

'Q And such statements were prepared in respect to the Company's various operations?

A They were prepared with respect to the total operations and broken down for various purposes.'

And then a little later on there is: "The breakdown which I am talking about, there were special statements prepared with regard to the natural gas and the gasoline operations as a combined operation, and there were other statements prepared with respect to production as a whole" and so on, and then:

'Q My point is that there are statements showing the results of the operations of each of the various divisions of Royalite?

A That is correct.

Q And how often were these statements prepared?

A One annually, to my knowledge.'

And going back to the question at the top of the page, those statements were prepared "as far as can be done scientifically. "That is the purpose of preparing statements as far as can be done scientifically with relation to each Department." "Answer. That is correct".

Now that about sets out the situation, does it.

A It sets out what you have just read there."

Then you will remember on further cross-examination of Mr. Kirkpatrick, Mr. Kirkpatrick, he said those were records of the Royalite Company. He was an official of the Madison Company and he gave us his recollection of one breakdown involving an allocation of 60% of the costs of gathering gas, 60% to the dry gas operations, 40% to the other operations.

Now there are those statements I am asking for and the statements referred to during examination by the Chairman of this Board which I understood Mr. Steer to say were in his control and available and possibly statements I have already mentioned that may show that, but if they do not then these other statements which this Company has available which will show the values of the respective products carried through these distributing lines.

Now I am not making this application in the first instance or perhaps at all for or by way of a motion to direct certain things to be produced, although I think the Board has ample power to do it. I am asking to be permitted on cross-examination of a witness, put on the stand by the Royalite Company, and taking part in this hearing, and with a view to testing the accuracy or otherwise of the statements volunteered in their reports, which are the subject of cross-examination found at bottom of page 1 and 2 in Exhibit 98, that these documents be produced. The Royalite Company is operating as a public utility under definition of public utility found in the 1945 amendment and I expect in the 1944 Act as well. The apportionment of the costs of gathering as between the several functions we will say of production of natural gasoline and the production of dry gas, is perhaps one of the important points that is coming before this Board. We have had evidence on and discussion on it and I think perhaps the thing might be shortened that once this Board directed Mr. Kirkpatrick to give the contents as far as the recollection of those reports as to the apportionment go that would settle it for the Board at this time whether or not the documents he referred to must be produced when

the witness comes on the stand, because if the hearsay evidence is competent, certainly the documents must be relevant. Apsrt from that ruling already made by the Board. The Company has made a submission this statement that charges to Royalite for services performed by Madison for the gathering and compressors and so on should be arrived at in a certain way. That at once makes open a whole field of testing the validity of that suggestion and the reasonableness of that suggestion, because if on cross- examination we are faced with the favourable parts of the record which they have and which once becomes a part of the evidence, and we want to test on examination, that evidence so far as the proper apportionment being 60% to dry gas and 40% to wet gas, it may be 100% to wet gas. We do not know what those things may disclose and I am not making that argument at the present time. Certainly there is no reason why we should accept this statement just because that is the way they were set up on the books.

Now as to the position generally. We are having a lot of discussion and theories put forward as to what should be done and what can be done, and what the results will be. I suggest to this Board when we are confronted with an established fact and not merely theory, the best evidence of what can be done is the result, and the proof of the pudding is in the eating.

(Go to page 2678).

And I say that is the test, whereby this Board, when you have in your possession the facts which will tell you just what happens when you do certain things and how they work out. That is the evidence. Why grope around in theories when you have the facts to discuss.

THE CHAIRMAN: In other words, what you want to do, Mr. Fenerty, is to get those records if you can, and compare the records with the engineering estimates and probabilities that have been submitted at this hearing.

MR. FENERTY: With a view to breaking down the evidence submitted here by Mr. Mercer. We think what they did establish is something different from his theory.

THE CHAIRMAN: And then if, Mr. Fenerty, it could be said that the apportionment that was made of those records, in those records, was merely a matter of internal arrangement in the Company and did not prove anything so far as this hearing is concerned, where would we be then?

MR. FENERTY: Then, of course, I would argue that those apportionments were made for those specific purposes. Those specific purposes must be assumed to be legitimate, and if they were made for those purposes without any reference to the results of a public utility inquiry, that is the best evidence of what could be done.

THE CHAIRMAN: Do you agree with Mr. Steer that under Section 19, Subsection 9, the Board has that power?

MR. FENERTY: Yes. If the Board is of the opinion that I am not entitled to this as a matter of right intestate on cross-examination, in the evidence of this witness, then of course I refer to Section 19, but I say I am not driven to Section 19.

THE CHAIRMAN: But you can put your case on two grounds, one, you have the inherent right to cross-examine this witness, and to make him produce records in his possession.

MR. FENERTY: Yes.

THE CHAIRMAN: And in addition the Board has the power under Section 19, subsection 9.

MR. FENERTY: On an independent motion. I should have mentioned that.

THE CHAIRMAN: Mr.Chambers?

MR. CHAMBERS: I probably should deal first with the last statement of my learned friend, Mr. Fenerty. As I appreciate the reason that he wants this information, he says if those allocations were made by the Royalite Company inter-departmentally, and without special consideration, that they become evidence, and cogent evidence, as I understand it, before this Court. Now that to my mind is probably the crux of this whole thing. I say if that were so, the Board then must take into consideration the other three parties interested now. Before the allocation, as though I were sitting down as an individual and making a set of figures on my books, I could put them any place. They would not prejudice any person. My shareholders would get the same in the end irrespective of the allocation.

Now my learned friend, as I understood his argument, said the evidence that Royalite did this in the past is evidence what should be done in the future, in fixing the rates of Royalite as compared with other parties to this transaction. Now I submit.....

THE CHAIRMAN: I do not think he went that far,

Mr. Chambers. I took him to say that if he got those records he could then use those records for the purpose of testing the crucible that you are now putting forward. That is what I understood, not that he would say to the Board, "That is what he did in the past, and that is what you should order him to do in the future". He said the Board had the inherent power to compel the witness to answer those questions on cross-examination, and in any event that he could depend on section 19, subsection 9 as the ground of a subsequent motion asking for the production.

MR. CHAMBERS: But just before that, in a reply to you, Sir, I thought that he wanted it in such a way that took all the meat out of the understanding that you had.

MR. FENERTY: I do not want my learned friend to misunderstand me. It is quite right, I put it on the basis that the Court said, for the purpose of testing, but if on the examination of those statements I can show to the Court that what they did in the past is a proper guidance for the future, once they are before the Court I might be able to do that.

MR. STEER: And show the purposes why that was done.

MR. CHAMBERS: The record will indicate what was said. Before I deal with the main part of the argument, as I understand it, my learned friend in the first place based his application on some inherent right in this Board that specially arises because the matter came up in cross-examination. Now in my mind, and my submission is that neither the Court nor a statutory Board nor any other tribunal, has any greater or less power by reason of the fact of evidence having come

up in the course of an examination. We must consider the statute or the charter that the Board has to say whether it has power to do certain things.

Now, my appreciation of the duty of a witness and what he can be compelled to do, is this, whether it is in a Court or before a Board, he is put in the box and sworn, he can be asked, and is obliged to answer questions of which he has knowledge. He can under certain circumstances, if the tribunal has authority, be ordered to produce documents under his control. He can not, I submit, either in the Supreme Court or any other Court, be ordered by the tribunal or the presiding Judge to go away and prepare a statement. He cannot, I submit, be ordered to go away and inform himself. And that, in the essence, is the rule we have in Supreme Court trials. If he has not the information, the Court has the power to call other witnesses that have the information or have the documents produced.

Now, these witnesses, both Mr. Kirkpatrick and Mr. Mercer, say they have not the information at hand. Mr. Kirkpatrick says Royalite has certain documents. Mr. Mercer says they are under the control, under his control at the moment. But, as a starting point, I submit that the Board, the tribunal, can order the witness to produce documents under his control, but that they cannot order him to go and prepare documents. Now, what I am getting at is this; we will assume all this information that is desired is in the Royalite's books. It is not drawn in the way, we will say, that my learned friend wants it. If the Board has jurisdiction it can order the books to be produced. The witness, in the course of his cross-examination, can be asked to refer to those

books and give the information. But as far as being directed to go and prepare a statement to suit the question, I submit there is no power in this Board, no power in the Supreme Court, or any other tribunal.

THE CHAIRMAN: We are not being asked to make an order of that kind, Mr. Chambers.

MR. CHAMBERS: No, but I do submit that that is what in effect it is leading up to for the moment, because my information is that Mr. Fenerty is asking for certain information which was compiled by Mr. Hamilton and which Mr. Hamilton has. My information is that Royalite has not got that, that there were certain arbitrary allocations made by Mr. Hamilton.

THE CHAIRMAN: I do not think that that is my understanding. I think Mr. Hamilton's name came in this way, that he had prepared a statement relative to 1942 operations.

MR. CHAMBERS: '43.

THE CHAIRMAN: '43, I beg your pardon. That that statement was not available to anyone. Mr. Hamilton is the Board's auditor, and I have not seen that statement. I am sure Dr. Boomer has not seen it. It is a rather remarkable thing, but that is the fact, and Mr.Fenerty says that "since that statement is not available, then I want the books and the documents produced by the witness in the witness box, and then from those documents I will ask him certain questions." Now, am I right, Mr. Fenerty?

MR. FENERTY: Yes, that is one statement. Theother statements I referred to I do not think are amongst the documents available to Mr. Hamilton, that is, these statements referred to by Mr. Kirkpatrick.

MR. HAMILTON: If I might say a word, Sir, I saw

no formal statements of account by the Royalite Company. I prepared a set of statements in '43 from the books themselves.

MR. FENERTY: I am not interested in the statement Mr. Hamilton has. If he is going to make allocations, he will be called on the stand no doubt, and testify. I am interested in the material that was available by the Board's order and I am interested in this material with reference to which Mr. Kirkpatrick was cross-examined and was directed by the ruling of this Board to give some evidence as far as he prepared the contents, and the material that the cross-examination of Mr. Mercer disclosed today, which may or may not be included in those statements, and at the moment I will resort to the motion that I am making. I say that is elementary. If a witness can come before this Board and submit one basis and cannot be upset as to those various things, or the result, or anything else, by the actual material he has under his control, then I have no way of breaking him down on cross-examination.

THE CHAIRMAN: That is quite clear, you are not asking the witness to prepare a statement, you are asking him to produce documents which are now in existence and on the Royalite file.

MR. FENERTY: Yes. I was always brought up as far as a Court of law is concerned to go to the source to the best evidence, not take hearsay.

MR. CHAMBERS: So far as the statements that Mr. Kirkpatrick referred to, they are in one category, but my learned friend is asking for something, whether books, special statements, documents or files from which Mr. Hamilton has compiled a statement. Now my learned friend is asking an

order, or you can call it a direction or what have you, but I submit it is an order of this Board for Royalite to produce something. Now, I am entitled to know what he wants. Does he want all the Royalite books of account?

MR. FENERTY: Yes sir, the information on which Mr. Hamilton compiled his statement.

MR. CHAMBERS: Now, that is a motion in definite.....

MR. FENERTY: I will read it to you again if you want it, it is fairly well typed. As I said, I have these other documents in addition that we discussed, but this is the stuff, Financial Statement showing operations, Costs and results of Royalite Company's operations for the years 1942 and '43, and also showing the operating results of the different departments of the Royalite Company as an integrate Company for those years, that is what I want.

MR. CHAMBERS: I say here and now, there are no such statements in existence other than the Royalite Balance Sheets.

MR. FENERTY: If there is not anything I can't get them.

MR. CHAMBERS: And with that observation I will proceed.

THE CHAIRMAN: Mr. Chambers, how can a corporation be made to produce books? You do not suggest that a corporation is immune?

MR. CHAMBERS: No, not any more than an individual.

THE CHAIRMAN: How is it done in a Court of law? How is it done? How is the proposition put?

MR. CHAMBERS: I say the official of the Company in whose custody they are, can be summoned and he can be ordered to produce them. There is no doubt about that.

THE CHAIRMAN: You do not suggest that this Board has not the same power?

MR. CHAMBERS: I am going to argue that the past is a different thing.

MR. FENERTY: Speaking about a corporation, this is not Mr. Mercer's submission, this is the Royalite Oil Company's submission which can only act through an official. The Royalite Company has said something here which was set up. We say their books will show something else.

THE CHAIRMAN: As I apprehend, Mr. Chambers is going to say, "It is true we have made a submission. It is true the Board has certain powers, but those powers are limited by the relevancy of the matters which you wish to discuss," and he is going to say further that what happened in 1942 when the Royalite was an independent company is not relevant in the case of Royalite, a public utility. I am perhaps anticipating that.

MR. CHAMBERS: Yes. And I want to repeat it again that the order Mr. Fenerty is asking for, would not get him the information that he is after, unless the Board orders we bring up all of Royalite's books. Now, I say that the matter is out of the Board's jurisdiction, what took place in past years. It can get the information, the Board can, by sending Mr. Hamilton or any person it wants to designate.

THE CHAIRMAN: But supposing we do that, Mr. Chambers, as I understand it, you are going to object to it being used.

MR. CHAMBERS: Until this matter is settled now as to its relevancy. I think this is the key to the whole situation.

THE CHAIRMAN: I am sorry we have been interrupting

you, Mr. Chambers. I will try not to say anything more until you finish.

MR. CHAMBERS: Now, as I understand it, both the application of the city and the Gas Company is for an order. Mr. Fenerty may call it a direction, but unless the witness or client volunteers it, the Board must make an order for certain documents to be produced or certain information to be made available, and that information and the statements they are asking for concern the revenues, disbursements and the profits of the Royalite Company prior to the 20th day of March, 1944, the reason I mention that date that is the date when the Natural Gas Utilities Act was passed.

Now the position I take is that the Board has no jurisdiction whatsoever to make such an order, and in that regard I have one or two authorities that I would like to cite and put on the record. It is my submission that the Natural Gas Utilities Act, or the Natural Gas Utilies Board, being a purely statutory administrative tribunal, has only such powers and jurisdiction as are conferred by the Natural Gas Utilities Act, and that the terms of that Act in this connection must be strictly construed. And in support of that I cite these cases. There is the Black Diamond Oilfields Limited vs.Carpenter, 1915, 9 W.W.R., 158; a case before the Alberta Court of Appeal. Also the case of Re Forbes vs. Michigan Central Railway, 1893, 20 O.A.R., page 584. The Burrard Inlet Tunnel & Bridge Company vs. Eurana, 1939, 1 W.W.R., 325, a Privy Council decision, and I refer particularly to page 330.

MR. CHAMBERS: The rule as I have stated is also to be found in Maxwell's "Interpretation of Statutes", Seventh Edition, pages 252 to 255.

I just read to the Board this statement of Mr. Justice Taschereau of the Supreme Court of Canada, as long ago as 1886, in the case of "In re Sproule" 12 Supreme Court reports at page 140. He is talking about the Supreme Court of Canada's jurisdiction and he says this:

> "The judges of this Court, and this Court itself, have no other powers than those expressly conferred upon them by the Statute. Their powers are exclusively statutory and that this Court is constituted a Court of common law and equity must, in conjunction with the British North America Act, be held to apply only to the Appellate jurisdiction of the Court, not to any original jurisdiction which Parliament did not, and could not, confer upon it."

Now I submit then that my learned friend, in order to obtain a valid Order from this Board, must, whether the question comes up in cross-examination, direct examination or how have you, must find authority for the Board to make that Order within the confines of the Natural Gas Utilities Act. Now let us look for a few moments at the Natural Gas Utilities Act. I will admit frankly that Royalite as the owner of wells in Turner Valley is a proprietor of a public utility within the meaning of the Natural Gas Utilities Act. That is provided for in Section 2 (k), I think, of the Act iself and also mentioned specifically in Section 7. But Royalite as the owner of an Absorption Plant is not, I submit, a proprietor of a public utility within the Natural Gas Utilities Act. But that division, that is as between it and the

producer and the price received for the wet product from the Absorption Plant is under the Board's control and jurisdiction and that is taken care of by Section 72 - 3. But while the Board has expressly conferred upon it power to fix that division the Act was very careful not to make the proprietor of an Absorption Plant a proprietor of a public utility within the meaning of the Act. As I have already said, that Act came into force on the 20th day of March, 1944.

Now we turn to Sections 18, 19 and 20 which are the sections of the Act headed "Jurisdiction and Powers". Section 18 says:

> "The Board shall have exclusive power and jurisdiction to deal with all public utilities as defined by this Act and the proprietors thereof, subject to the provisions hereof."

Now I admit also - no question about it - that prior to the 20th day of March, 1944 the Public Utilities Act had some application.

THE CHAIRMAN: Pardon me one moment, Mr. Chambers. I know that, I think Mr. Trammel, but I know Dr. Boomer has another meeting, business meeting, which they have to go to and if you can finish by one o'clock - but I doubt if you can.

MR. CHAMBERS: No, I cannot.

THE CHAIRMAN: Then we might as well adjourn now, and you are starting on a fresh branch of your Argument and we will resume the first thing in the morning. Mr. Mercer, of course, will be here in the morning?

MR. CHAMBERS: Oh yes.

(At this stage the Hearing was adjourned until 9.30 A.M. Sept. 6th, 1945.)

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